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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

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**HIGHLAND CAPITAL MANAGEMENT, L.P.,** §  
§  
**Plaintiff,** §  
§  
**v.** § **Case No. 3:21-cv-00881-X**  
§  
§  
**HIGHLAND CAPITAL MANAGEMENT FUND** §  
**ADVISORS, L.P., et al.,** §  
§  
**Respondents.** §  
§

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**MOTION TO STRIKE REPLY**

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The Charitable DAF Fund, L.P. and CLO HoldCo, Ltd. (together the “Charitable Respondents”) respectfully file this *Motion to Strike Reply* (the “Motion to Strike”) related to the *Supplemental Appendix and Declaration of Gregory V. Demo* [Dkt. No. 190] (the “Reply Appendix”) filed in connection with the *Reply to Objections to Deem the Dondero Entities Vexatious Litigants and for Related Relief* [Dkt. No. 189] (the “Reply”) filed by Movant Highland Capital Management, L.P. (“HCMLP”) in support of HCMLP’s *Motion to Deem Dondero Entities*

*Vexatious Litigants and for Related Relief* [Dkt. No. 136] (the “Vexatious Litigant Motion”) and the *Memorandum of Law in Support* [Dkt. No. 137] (the “Memo”).

1. Filing evidence with a reply brief is generally prohibited and raises fundamental issues of fairness. *See Springs Indus., Inc. v. American Motorists Ins. Co.*, 137 F.R.D. 238, 239–40 (N.D.Tex.1991) (Fitzwater, J.); *United States v. City of Dallas, Tex.*, No. 3:09-CV-1452-O, 2011 WL 4912590, at \*4 (N.D. Tex. Sept. 27, 2011), *report and recommendation adopted sub nom. Moore v. City of Dallas, Tex.*, No. 3:09-CV-1452-O, 2011 WL 4907303 (N.D. Tex. Oct. 14, 2011) (Ramirez, J.); *Canter v. Big Lots Stores, Inc.*, No. 3:13-CV-865-P, 2014 WL 12603044, at \*2 (N.D. Tex. Jan. 6, 2014) (Solis, J.); *Jackson v. Dallas Cnty. Juv. Prob. Dep't*, No. CIV.A. 3:06-CV-264MB, 2007 WL 2187250, at \*4 (N.D. Tex. July 30, 2007), *aff'd sub nom. Jackson v. Dallas Cnty. Juv. Dep't*, 288 F. App'x 909 (5th Cir. 2008) (Lynn. J.).

2. Therefore, the Reply Appendix is improper, and must be stricken as the respondents have had no opportunity to respond. *See also Simmons v. T-Mobile USA, Inc.*, No. CIVA H-06-1820, 2006 WL 3447684, at \*1 (S.D. Tex. Nov. 22, 2006) (citing *Vais Arms, Inc. v. Vais*, 383 F.3d 287, 292 (5th Cir.2004) (finding in the context of summary judgment reply evidence may be considered only if the nonmovant has been given a reasonable opportunity to respond)).

## CONCLUSION

The Charitable Respondents respectfully request that this Court strike the Reply Appendix, and, to the extent the Reply incorporates and depends upon the Reply Appendix, the Reply itself.

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Respectfully Submitted:

**KELLY HART PITRE**

/s/ Louis M. Phillips

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*Counsel for CLO HoldCo, Ltd.*

**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that a copy of the above-filed pleading was served through this Court's CM/ECF system on all parties receiving notice in this case on this February 23, 2024.

*/s/ Louis M. Phillips*  
Louis M. Phillips (#10505)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§
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<b>Plaintiff,</b>	§
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<b>v.</b>	§ <b>Case No. 3:21-cv-00881-X</b>
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<b>HIGHLAND CAPITAL MANAGEMENT FUND</b>	§
<b>ADVISORS, L.P., et al.,</b>	§
	§
<b>Respondents.</b>	§
	§

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**ORDER GRANTING MOTION TO STRIKE REPLY**

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Having considered *Motion to Strike Reply* (the “Motion to Strike”) filed by the Charitable DAF Fund, L.P. and CLO HoldCo, Ltd. (together the “Charitable Respondents”), the Court finds and concludes that there is good cause to grant the Motion to Strike. Accordingly, **IT IS THEREFORE ORDERED THAT:**

1. The Motion to Strike is **GRANTED**.
2. The *Supplemental Appendix and Declaration of Gregory V. Demo* [Dkt. No. 190] (the “Reply Appendix”) and the portions of the *Reply to Objections to Deem the Dondero Entities Vexatious Litigants and for Related Relief* [Dkt. No. 189] which specifically refer to or incorporate the Reply Appendix are hereby **STRICKEN** from the record.

It is so ordered on this \_\_\_\_ day of \_\_\_\_\_, 2024.

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The Honorable Brantley Starr  
United States District Judge